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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

JUL 19 1993

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

IN THE MATTER OF:

MM DOCKET NO. 93-95

ERIC R. HILDING

and

JUDY YEP HUGHES

Windsor, California

DATE OF CONFERENCE: June 9, 1993

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JUL 19 1993

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In Applications of:

ERIC R. HILDING

JUDY YEP HUGHES

Windsor, California

MM DOCKET NO. 93-95

The above-entitled matter came on for pre-hearing conference pursuant to Notice before Judge Richard L. Sippel, Administrative Law Judge, at 2000 L Street, N.W., Washington, D.C., in Courtroom No. 1, on Wednesday, June 9, 1993, at 9:05 a.m.

APPEARANCES:

On behalf of Eric R. Hilding:

Eric R. Hilding
P.O. Box 1700
Morgan Hill, California 95038

On behalf of Judy Yep Hughes:

Peter A. Casciato
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On behalf of Mass Media Bureau:

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Conference began: 9:05 a.m. Conference Ended: 10:50 a.m.

1 P R O C E E D I N G S

2 JUDGE SIPPEL: You're all set? We're on the record.
3 This is our first pre-hearing conference, and I'm going to a--
4 and this is the Windsor, California hearing, and I'm going to
5 ask the parties to identify themselves this morning.
6 Mr. Hilding?

7 MR. HILDING: Yes, Your Honor, good morning. My
8 name is Eric R. Hilding.

9 JUDGE SIPPEL: And you're representing yourself --

10 MR. HILDING: This morning, sir.

11 JUDGE SIPPEL: -- representing yourself. You're,
12 you're not represented by counsel this morning?

13 MR. HILDING: Correct.

14 JUDGE SIPPEL: All right, and on behalf of
15 Judy Yep Hughes?

16 MR. CASCIATO: I'm Peter A. Casciato, Your Honor.

17 JUDGE SIPPEL: Very well.

18 MISS HUGHES: Good morning.

19 JUDGE SIPPEL: And Miss Hughes? Mrs. Hughes?

20 MR. CASCIATO: This is Miss Hughes here.

21 MISS HUGHES: Yes.

22 JUDGE SIPPEL: And on behalf of the Bureau?

23 MR. GOLDSTEIN: Norman Goldstein.

24 JUDGE SIPPEL: Okay, that's everybody. Now, I do
25 want to make just a brief statement for the record. I

1 understand that Mr. Hilding was making efforts yesterday to,
2 to, to be here on time this morning. He contacted my office
3 and I'm aware of the fact that you, you know, that you tried
4 expeditiously to get here, and you obviously succeeded. We're
5 going to accomplish, I hope, everything that needs to be
6 accomplished this morning within the hour, so that both
7 parties will be able to return to California today without any
8 inconvenience, at least as far as time is concerned. I'm
9 going to start by -- I want to ask counsel first, I'm going to
10 ask both parties first, have all the appli-- have there been
11 affidavits of publication filed and served?

12 MR. CASCIATO: We have not filed ours yet,
13 Your Honor, but the publication, I believe, is complete.

14 MISS HUGHES: It's complete.

15 JUDGE SIPPEL: It is complete?

16 MR. CASCIATO: Right.

17 JUDGE SIPPEL: All right.

18 MR. CASCIATO: We haven't filed it yet, though.

19 JUDGE SIPPEL: Mr. Hilding?

20 MR. HILDING: I have a copy of the completed
21 publication here.

22 JUDGE SIPPEL: All right. You know about the

23 procedure for the filing of an affidavit? You have to file an

1 Your Honor.

2 JUDGE SIPPEL: All right, well, I'm going to give
3 the parties 20 days to have those on file with me.

4 MR. HILDING: Okay.

5 JUDGE SIPPEL: All right, now, I'm also going to
6 note that there is no -- from the hearing designation order,
7 there is no issue of comparative coverage in this case, is
8 that correct? Everybody agrees with that.

9 MR. HILDING: I -- that's my, that's my
10 understanding.

11 JUDGE SIPPEL: So there's no engineering evidence
12 that's going to be required.

13 MR. CASCIATO: That's right, yeah.

14 JUDGE SIPPEL: All right, then, that would be the,
15 the -- in the comparative case, that would essentially be the
16 issue that the Bureau would be involved in, Mr. Gold--

17 MR. GOLDSTEIN: That's correct, Your Honor.

18 JUDGE SIPPEL: I, I'm just -- you're -- at any time
19 you want, you know, you want to leave the conference,
20 Mr. Goldstein, you know, you're free to do so.

21 MR. GOLDSTEIN: Okay.

22 JUDGE SIPPEL: Now, the third question that I have
23 that I want to address, there, there's a reference made in one
24 of Mr. Hilding's pleadings to a potential conflict on behalf
25 of -- on Mr. Casciato's -- in, in connection with

1 Mr. Casciato's representation of a Coyote Communications. I'm
2 going to ask counsel to first address that. Would you tell me
3 what, what -- briefly explain what that situation was and
4 explain whether or not you see a potential for any conflict?

5 MR. CASCIATO: I'd be happy to do that, Your Honor.
6 In fact, I brought some documents with me in that regard.

7 JUDGE SIPPEL: Thank you. Will you identify for the
8 record what it is that you're handing me?

9 MR. CASCIATO: I'm handing you a copy of an
10 affidavit from the chief financial officer of Coyote
11 Communications, and a copy of a declaration from Lee Schubert
12 of the law firm of Haley, Bader and Potts.

13 JUDGE SIPPEL: Thank you. And the copy -- you're
14 giving a copy of this to Mr. Hilding now.

15 MR. CASCIATO: And maybe I should also give a copy
16 to the reporter --

17 JUDGE SIPPEL: Well, we're going to have to --
18 let's, let's, let's --

19 MR. CASCIATO: Do you want me to explain it to you
20 now?

21 JUDGE SIPPEL: Let's take first things first. What
22 about Mr. Goldstein? Do you have a copy for Mr. Goldstein?

23 MR. CASCIATO: Sure.

24 JUDGE SIPPEL: Now, the first document is a
25 declaration of Gregory Genet-- is that Genetti?

1 MR. CASCIATO: Yes, Your Honor.

2 JUDGE SIPPEL: Um-hum. Now, would you explain what
3 the relevance of that document is?

4 MR. CASCIATO: Well, as near as I can tell from what
5 Mr. Hilding has said in his pleading, is that he thinks that
6 there is a conflict because somehow or another I represented
7 him, insofar as now that on behalf of Miss Hughes I'm making a
8 request for documents that he may have filed at the Commission
9 in rule-makings or in other application cases. The
10 declaration from Mr. Genetti makes clear that for a time
11 period from January to September of '89, I acted as corporate
12 counsel to Coyote; that I did nothing for them with regard to
13 the document request having to do with FCC matters pertinent
14 to Coyote and, in fact, I was never retained as communications
15 counsel; and, also, that Mr. Hilding, himself, with regard to
16 Coyote did not -- was brought out of the Coyote proceeding
17 during that time period, and also around that time period
18 that, that I did not represent Coyote in that transaction.

19 JUDGE SIPPEL: What was the -- say again what that
20 transaction was, if you know?

21 MR. CASCIATO: The transaction -- my understanding
22 is that the -- in the Morgan Hill proceeding, which created
23 Coyote --

24 MR. HILDING: Correct.

25 MR. CASCIATO: -- was about an eight-party

1 proceeding, and maybe what I could do is, if I could refer you
2 to the -- to Mr. Schubert's declaration while we're talking
3 about it, because it kind of makes clear what is going on.

4 JUDGE SIPPEL: All right, well, let's do this.
5 Let's have these, let's have these marked as a -- I'm going to
6 call this Conference Exhibit 1.

7 MR. CASCIATO: That would be the Genetti?

8 JUDGE SIPPEL: That's the first thing you talked
9 about.

10 (Whereupon, the document referred to
11 as Conference Exhibit No. 1 was
12 marked for identification.)

13 MR. CASCIATO: Right.

14 JUDGE SIPPEL: Now, what is the next document you
15 had talked about?

16 MR. CASCIATO: That, that would be the declaration
17 of Lee Schubert, who is a partner in the law firm of Haley,
18 Bader and Potts.

19 JUDGE SIPPEL: All right, let's refer to that as
20 Conference Exhibit No. 2, and we're going to have to get this
21 straightened out with the reporter before we leave here this
22 morning.

23 (Whereupon, the document referred to
24 as Conference Exhibit No. 2 was
25 marked for identification.)

1 MR. CASCIATO: Okay. Can I continue, Your Honor?

2 JUDGE SIPPEL: Go right ahead.

3 MR. CASCIATO: Okay, as Mr. Schubert's declaration
4 makes clear, and, and my own participation from the Morgan
5 Hill proceeding, in the Morgan Hill proceeding, his law
6 firm -- and he represented an applicant named Ethnic Radio. I
7 represented an individual named Peter Mieuli, and John Midlen,
8 Jr. represented South Valley Broadcasting, which was
9 Mr. Hilding's applicant. That case started to hearing and
10 then settled, and the settlement was effectuated by a, by a
11 merger of a number of the applicants into Coyote
12 Communications, Inc. As paragraph 2 of Mr. Schubert's
13 declaration makes clear, he has served as the sole
14 communications counsel for Coyote Communications, Inc., the
15 merged applicant and I have not. Now, turning back to
16 Mr. Genetti's declaration, you will note that in the first
17 paragraph of his declaration, Conference Exhibit 1, he
18 reiterates that Haley, Bader and Potts has been the sole
19 communications counsel, and that I have never been retained by
20 Coyote to do any of the matters which have been requested of
21 Mr. Hilding, and that the only matters I handled for Coyote
22 had to do with the incorporation. And, in fact, I am no
23 longer Coyote's counsel. I was only Coyote's counsel in that
24 regard for about an 8-month period in 1989.

25 JUDGE SIPPEL: All right, now, in connection with

1 | your duties as, as corporate counsel for Coyote, did you have
2 | any occasion to, to see any documents that may have been
3 | submitted by Mr. Hilding that related to any of the broadcast
4 | work?

5 | MR. GAGGIONE: The only document that I would have

1 counsel, I'm sorry, with regard to FCC matters. What
2 triggered the whole thing was Mr. Casciato's request for
3 rule-making petitions and applications associated with Morgan
4 Hill. I don't think --

5 JUDGE SIPPEL: In this case, in this particular
6 case.

7 MR. HILDING: Correct. I'm sorry, yes.

8 JUDGE SIPPEL: I know what you're referring --

9 MR. HILDING: Supplementary document production
10 and -- perhaps it didn't occur to Mr. Casciato, and, and
11 again, please, nothing, nothing, personal, but I saw that and
12 I, I said, "Wait a minute, someplace back here Mr. Casciato
13 represented, to whatever degree, Coyote Communications, Inc."
14 That's all I could remember at the time, and I remembered that
15 I was a party to that application; and I remember, I believe,
16 in my opposition, partial opposition, to the supplementary
17 document production request, I indicated a concern over
18 anything to do with corporate minutes, of which there were a
19 number of discussions that took place. I, I'm sure being a
20 corporate counsel, you would have had access to those
21 corporate documents that, that -- with respect to any legal
22 ~~fact or idemp concerning the prosecution of Mrs. Hughes'~~

1 minutes?

2 JUDGE SIPPEL: Well, you're going to have to direct
3 your --

4 MR. HILDING: Oh, I'm sorry, sir.

5 JUDGE SIPPEL: -- arguments and points --

6 MR. HILDING: Oh.

7 JUDGE SIPPEL: -- to me.

8 MR. HILDING: Okay.

9 JUDGE SIPPEL: This is not going to be a
10 back-and-forth between you and Mr. Casciato.

11 MR. HILDING: I apologize for my --

12 JUDGE SIPPEL: You, you want to know, you want to
13 know what he saw in terms of corporate minutes in terms of
14 what entity?

15 MR. HILDING: Just -- of, of anything that
16 potentially could be used to prejudice me in this situation.

17 JUDGE SIPPEL: All right.

18 MR. HILDING: The, the, the, the word legal theories
19 that came up in, in some of the privileged documents on the
20 part of Mr. Casciato. Your Honor, all I can tell you is that,
21 when I remember, is that somehow we were involved together,
22 okay, even though somewhat remotely indirectly; however, in
23 talking to one of the attorneys in, in my service
24 organization, I said, "What, what is your -- doesn't it seem
25 like there, there's a potential conflict of interest or

1 something?" And the response I got was "yes."

2 JUDGE SIPPEL: All right, I understand your, I
3 understand your concern but it really is -- it -- you haven't
4 been -- this morning, you never focused it any more than you
5 did in your, in your partial opposition. That was filed back
6 on May 24th.

7 MR. HILDING: Right.

8 JUDGE SIPPEL: Now, Mr. Casciato has given a very
9 focused response to your concern. I mean, I, I acknowledge
10 that your concern --

11 MR. HILDING: Um-hum.

12 JUDGE SIPPEL: -- at least in the, in, in, in the
13 preliminary stages would be a legitimate concern, but he has
14 focused -- given you a focused answer on it. Do you have
15 anything more that you --

16 MR. HILDING: Well, the only thing that concerns me
17 is, is -- and, and maybe I misunderstood, but the, the radio
18 station of which Coyote Communications, Inc. is the licensee,
19 must have been about a week ago, I had asked the receptionist,
20 or the main gal that's there answering the phones and things,
21 if, if Mr. Casciato was, was counsel for Coyote
22 Communications, and she said, "Yes." Now, maybe, maybe she
23 didn't understand what I was talking about. That's what I
24 heard with my own two ears. If she misunderstood my
25 question -- what I just heard Mr. Casciato say is that he, if

1 I'm correct, was no longer involved as the counsel for Coyote
2 Communications, Inc. That it's the law firm of Haley, Bader
3 and Potts. Did I hear correctly?

4 JUDGE SIPPEL: Well, you don't have to ask me that
5 question as a factual matter. There's a declaration that has
6 just been submitted of Gregory Genetti, and he is in effect
7 saying that since its creation, that is Coyote's creation,
8 Haley, Bader and Potts has served and continues to serve as
9 its sole communications counsel.

10 MR. HILDING: Then apparently the information I
11 received from Lilly, or the gal at the radio station, perhaps
12 she was referring to Mr. Casciato as corporate counsel, then.
13 I can see where that misunderstanding would come about.

14 JUDGE SIPPEL: Well, my point is, is that this
15 morning, it's become crystal clear, based on the Genetti
16 declaration and Mr. Casciato's statement, and he understands
17 when he makes representation such as these, he's got his
18 professional --

19 MR. HILDING: Correct.

20 JUDGE SIPPEL: -- reputation at stake -- he's
21 represented that he served only in the capacity of corporate
22 counsel between January and September of 1989; that he's done
23 no work as communications counsel; and the only thing with
24 respect with to you -- documents -- is concerned, and Coyote,
25 the only thing that he has seen is a subscription agreement

1 for your Coyote investment. I mean, he has seen nothing else
2 that could conceivably be -- well, he has seen nothing else.

3 MR. HILDING: May I ask --

4 JUDGE SIPPEL: So, therefore, it doesn't seem to me
5 as though there's any basis for a concern that he might be
6 inquiring into areas in this case with respect to your
7 activities in which he has represented you in some capacity
8 previously, which is -- goes to the nub of the, of the
9 conflict question.

10 MR. HILDING: May I ask a question, Your Honor?

11 JUDGE SIPPEL: Yes.

12 MR. HILDING: Yes, did or did not Mr. Casciato have
13 access to corporate minutes? You mentioned just the
14 subscription agreement, but the documents relating to
15 discussions among the applicants and, and theories in terms
16 of, of, of broadcast objectives and things of this nature?

17 JUDGE SIPPEL: Well, let's -- I, I will put the
18 question to Mr. Casciato.

19 MR. HILDING: And again, I apologize for my --

20 JUDGE SIPPEL: All right.

21 MR. HILDING: I -- I'm trying to learn here real
22 quick.

23 JUDGE SIPPEL: No, you're -- I understand your
24 question. Can you respond to that, Mr. Casciato?

25 MR. CASCIATO: I might have seen them. I might have

1 | them in, in an old file from Coyote that would go back to that
2 | time period. I did not draft the corporate minutes for
3 | Coyote.

4 | JUDGE SIPPEL: You didn't draft the minutes. All
5 | right, do --

6 | MR. CASCIATO: But I think maybe I can make it
7 | clearer. My supplemental document record request?

8 | JUDGE SIPPEL: Um-hum.

9 | MR. CASCIATO: I'm not asking Mr. Hilding for
10 | anything about Coyote. I don't care about Coyote.

11 | JUDGE SIPPEL: Well --

12 | MR. CASCIATO: I'm not -- I'm, I'm only talking
13 | about applications and other proceedings in which he
14 | participated as the applicant, which is not the case in the
15 | case of Coyote.

16 | JUDGE SIPPEL: Well, I, I, I -- I'd, I'd -- and I,
17 | and I want to get to that. That's a different issue; that's a
18 | discovery, the scope of the documents. It's something else
19 | again, but Mr. Hilding says that he's -- he, he doesn't have
20 | direct evidence of this, I take it -- or you would have
21 | produced it. What you're saying is, is that -- well, I -- do
22 | you have direct evidence of what you're suggesting?

1 It -- I would be, I, I would be willing to examine the -- do
2 you have minutes of these Coyote meetings? Do you have the
3 minutes themselves?

4 MR. HILDING: Possibly someplace, Your Honor.
5 That's more of a discussion on, on -- with respect to
6 Mr. Casciato's request.

7 JUDGE SIPPEL: All right, you think you have minutes
8 of Coyote in your file someplace?

9 MR. CASCIATO: I might.

10 JUDGE SIPPEL: You might, you might not.

11 MR. CASCIATO: I'd have to go back and look.

12 JUDGE SIPPEL: Because obviously you're, you're
13 not -- you're no longer there.

14 MR. CASCIATO: Right.

15 JUDGE SIPPEL: I mean, you're no longer with Coyote.
16 I will give you, I will give you, to both, both sides 10 days
17 to submit to me for in camera review the minutes.

18 MR. HILDING: Submit -- I didn't hear you.

19 JUDGE SIPPEL: I want -- I, I say I will review the
20 minutes that you have and the minutes that Mr. Casciato has.
21 I'm assuming someplace between the two of you maybe there'll
22 be a complete set.

23 MR. HILDING: I'll look.

24 JUDGE SIPPEL: You can submit to me what you have;
25 Mr. Casciato can submit to me what he has.

1 MR. HILDING: Correct.

2 JUDGE SIPPEL: And I'll look at them.

3 MR. HILDING: If I have anything.

4 JUDGE SIPPEL: If you have anything. I'm giving you
5 10 days to submit --

6 MR. HILDING: Thank you.

7 JUDGE SIPPEL: -- whatever you have or whatever you
8 can obtain, because I -- the reason I'm saying it that way is
9 that I see nothing that's been presented to me, even by the --
10 by your recollect-- by your recollection or by anything that
11 Mr. Casciato has represented to me which indicates that there
12 is a problem here. However, in the interest of trying to put
13 your mind at ease the best I possibly can, I'm willing to make
14 this next effort.

15 MR. HILDING: I appreciate that, Your Honor.

16 JUDGE SIPPEL: It should not take me much time and
17 it should not take the parties much time.

18 MR. HILDING: Appreciate it.

19 JUDGE SIPPEL: But -- and then I will then make a
20 formal ruling on this but as of at the present time I see no
21 basis to disqualify Mr. Casciato for any conflict of interest
22 he may have. I'm going to ask Mr. Goldstein: Do you have
23 anything that you wanted to add to that?

24 MR. GOLDSTEIN: I have not, Your Honor.

25 JUDGE SIPPEL: All right, then let's move onto the

1 next category. So you've got 10 days and --

2 MR. HILDING: Can I ask you a question, Your Honor?

3 JUDGE SIPPEL: Yes, you may.

4 MR. HILDING: With respect to that supplemental
5 document production, are we off the discussion on that or are
6 we pertaining strictly to the conflict of interest? I do have
7 several concerns with respect to that request. Is that more
8 appropriately addressed a little later? With respect to the
9 supplementary document production request.

10 JUDGE SIPPEL: I -- no, that's that's the next

1 MR. HILDING: Thank you.

2 JUDGE SIPPEL: Now, you're -- and ag-- before I
3 leave this subject, I again want to remind Mr. Casciato we've
4 got a couple of documents here that have been marked. We want
5 to work with the, with the reporter before she leaves to be
6 sure these things get in the record properly.

7 MR. CASCIATO: Sure.

8 JUDGE SIPPEL: Okay, now, the third thing I wanted
9 to tell -- the next thing I want to advise the parties is that
10 because you are traveling here from California, and because of
11 the -- there's only -- it's only a two-party case, in the
12 event that it is not settled before the hearing date, I'm
13 going to just have one hearing date. There's not going to be
14 an admission session plus a hearing. The hearing date, the
15 new hearing date, I'm setting is -- the old hearing date was
16 September the 21st, as you recall.

17 MR. HILDING: Um-hum.

18 JUDGE SIPPEL: I'm setting a new hearing date for
19 September the 20th. There is a, a holiday at the end of that
20 week; Yom Kippur is, I believe, is, is the Friday of that
21 week. So if we start Monday morning at 10 o'clock, I am sure
22 that we can finish this case, unless there is added issues. I
23 am sure that we can finish this case well in advance of
24 Friday, and it will all be done in one session. All right?
25 Do you all understand?

1 MR. HILDING: I understand.

2 JUDGE SIPPEL: Okay. Does that, does that date --
3 does -- I assume that date doesn't give you a problem, Mr.,
4 Mr. Goldstein?

5 MR. GOLDSTEIN: I don't see where I'll be
6 participating.

7 JUDGE SIPPEL: Probably not. That's right. Okay,
8 well, just in case, I -- now, the next question I have is with
9 respect to -- or the subject I want to cover is the scope of
10 documents in the supplemental request. You're asking for in

1 MR. CASCIATO: Sure, and I'm interested in finding
2 out what representations he's made to the Commission insofar
3 as if he's going -- if he did say he would file an application
4 if the rule-making was granted, and if in turn he filed that
5 application, and if he made a representation about moving to
6 that community or being integrated at that station.

7 JUDGE SIPPEL: Oh, well, you, you, you think that
8 there might be something there that he said about
9 representations about moving to a community. This, this would
10 have to go, obviously, with the, with the pref-- a local
11 residence.

12 MR. CASCIATO: A local residence and, and
13 integration.

14 JUDGE SIPPEL: And integration.

15 MR. CASCIATO: Right, and I think that if, if there
16 is a pattern of a lot of these applications with these
17 representations, then this has a bearing on the veracity and
18 the, and the credibility of the present proposal in this
19 proceeding of moving to Windsor and working at the station.

20 JUDGE SIPPEL: Well, all right, I, I, I -- you know,
21 I see where you're going there but where would that be --
22 where would that necessarily show up in a, in a, in a petition
23 for a rule-making or a comment on a rule-making?

24 MR. CASCIATO: Well, it may -- in a petition for a
25 rule-making, at least an expression of interest in applying

1 | has to be made and, in fact, in some petitions for rule-making
2 | and rule-making comments, specific transmitter sites are
3 | usually specified, and I don't know the sophistication to the
4 | degree of Mr. Hilding in this regard what else he may have put
5 | in the petitions and in the, in the rule-making comments
6 | themselves.

7 | JUDGE SIPPEL: All right, but, again, even if he did
8 | make representations in -- these are other markets. I mean,
9 | I, I understand, I, I understand where you're going with that
10 | request but the, still and all, the relevance to that,
11 | whatever that might disclose in that -- it may or may not --
12 | but if it discloses something with respect to intentions on a
13 | residence, it's not going to have a direct bearing in this
14 | case.

15 | MR. CASCIATO: Well, I guess, again, not having any
16 | documents in front of me but assuming that it shows -- let,
17 | let's assume it shows 10 rule-makings with 10 sets of comments
18 | and then 10 applications, and they all come within the
19 | frequency of a 5-year period in 10 separate communities in
20 | California, and each time there's representations about moving
21 | to that community or working there, to me after -- you know,
22 | one can say -- certainly, one is free to file anything with
23 | the Commission and say you're going to do something or make a
24 | commitment but, to me, if there's a pattern of this taking
25 | place over time over a series, where none of those

1 applications or integration pledges are ever effectuated or
2 followed through upon, I believe that should be an open
3 question for the credibility of the witness in committing to
4 the Windsors.

5 JUDGE SIPPEL: Well, but he said that -- I don't
6 want to get too far ahead on this because he hasn't taken the
7 stand yet -- but he's made representations in his papers in
8 numerous places that he's been trying for years to get a
9 broadcast applications and he hasn't been successful. It's
10 something like 14 or 15 times he's tried, and he's never been
11 successful, so how could you test whether or not he's ever
12 carried out his, his -- any stated intentions that he makes?

13 MR. CASCIATO: I'm, I'm one step behind you there.
14 What I'm saying is that, depending on how far each of those
15 proceedings went, representations may have been made to the
16 Commission about what he would do, and I'm saying that you may
17 have contrary pledges or you may have a consistent series of
18 pledges in diverse communities over a fairly short period of
19 time saying that "if I win, I'll move here; if I win, I'll
20 move there; if I win, I'll move over here; if I win, I'll,
21 I'll, I'll work full time here." And I'm saying if you have a
22 bunch of those, and there's a pattern of those, even if
23 they're withdrawn, or if there are settlements, or there are
24 mergers, or there's dismissals, that after a while there
25 becomes a point where the cumulative effect of the evidence is